

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Jerding, et al.

Serial No.: 09/590,488

Filed: June 9, 2000

Confirmation No.: 2510

Group Art Unit: 2623

Examiner: Beliveau, Scott E.

Docket No.: A-6600 (191910-1540)

For: **User Interface Navigational System With
Parental Control For Video On Demand System**

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief - Patents
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is an appeal from the decision of Examiner Scott E. Beliveau, Group Art Unit 2623, mailed February 27, 2007, rejecting claims 74-95 in the present application and making the rejection FINAL.

I. **REAL PARTY IN INTEREST**

The real party in interest of the instant application is Scientific-Atlanta, Inc., having its principal place of business at 5030 Sugarloaf Parkway, Lawrenceville, GA 30044. Scientific-Atlanta, Inc., the assignee of record, is wholly owned by Cisco Systems, Inc.

II. **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

III. **STATUS OF THE CLAIMS**

Claims 74-95 are pending and stand rejected. Claims 1-73 stand cancelled. The Final Office Action has rejected all presently pending claims 74-95, and Appellant hereby appeals the rejection of all pending claims. Appellant traverses these rejections and respectfully submits that the rejections of record are clearly not proper.

IV. **STATUS OF AMENDMENTS**

No amendments have been made or requested since the mailing of the FINAL Office Action. A copy of the current claims is attached hereto in the Claims-Appendix in §IX.

V. **SUMMARY OF CLAIMED SUBJECT MATTER**

Example embodiments of the claimed subject matter, among others, are summarized below with reference numbers and references to the written description ("specification") and drawings. References are to the Substitute Specification and Replacement Drawings, both filed April 17, 2006. The subject matter described below appears at least where indicated, and may further appear in other places within the specification and drawings.

Embodiments according to independent claim 74 describe a method, responsive to a digital home communication terminal (DHCT 16) experiencing a reboot condition, determining if at least one video-on-demand (VOD) rental has been purchased and has not expired (see description at p.59, line 21 to p.61, line 7). Then the method, responsive to determining that at least one VOD rental has been purchased and has not expired, determines whether a previously established VOD session for a first VOD presentation is still active (see description at p.23, line 14 to p.24, line 6). The method, responsive to determining that the previously established VOD session for the first VOD presentation is still active, provides a VOD current rental screen 197 that includes a selectable option to view the first VOD presentation (see description at p.59, line 21 to p.61, line 7; p. 50, lines 4-20; FIG. 19A). The VOD current rental

screen has a VOD title of the first VOD presentation, information on the length of time remaining on the VOD title, and information on the rental time duration remaining for viewing the VOD title (see, *e.g.*, 270 in FIG. 19A). Subsequently, the method, responsive to a determination that the at least one VOD rental has been purchased and has not expired and the determination that the previously established VOD session for the first VOD presentation is no longer active, establishes another active VOD session for the first VOD presentation and provides the VOD current rental screen (see description p. 49, lines 5-18; 270 FIG. 19A). Then the method, responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired, provides a list of selectable VOD titles (see description p. 37, line 3 – p. 38, line 2 and p. 49, lines 18-19; FIG. 10).

Embodiments according to independent claim 89 describe a digital home communication terminal (“DHCT”, see, *e.g.*, 16 in FIG. 3) comprising memory (see, *e.g.*, 41 in FIG. 3) and program code stored in said memory (see description at p.12 lines 1-4). When the DHCT (16) experiences a reboot condition, the program code is configured to enable the DHCT (16) to first determine if at least one video-on-demand (VOD) rental has been purchased and has not expired (see description at p.59, line 21 to p.61, line 7). The DHCT (16), responsive to determining that at least one VOD rental has been purchased and has not expired, determines whether a previously established VOD session for a first VOD presentation is still active (see description at p.23, line 14 to p.24, line 6). The DHCT (16), responsive to determining that the previously established VOD session for the first VOD presentation is still active, provides a VOD current rental screen (270) that includes a selectable option to view the first VOD presentation (see description at p.59, line 21 to p.61, line 7; p. 50, lines 4-20; FIG. 19A). The VOD current rental screen (270) has a VOD title of the first VOD presentation, information on the length of time remaining on the VOD title, and information on the rental time duration remaining for viewing the VOD title (see, *e.g.*, 270 in FIG. 19A). Then, the DHCT (16), responsive to

determining that the at least one VOD rental has been purchased and has not expired and responsive to determining that the previously established VOD session for the first VOD presentation is no longer active, establishes another active VOD session for the first VOD presentation and provides the VOD current rental screen (see description p. 49, lines 5-18; 270 FIG. 19A). The DHCT (16), responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired, provides a list of selectable VOD titles (see description p. 37, line 3 – p. 38, line 2 and p. 49, lines 18-19; FIG. 10).

VI. **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The Final Office Action rejected claims 74-79 and 89-92 under §103(a) as allegedly being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), and in further view of *Swix* (6,609,253).

The Final Office Action rejected claims 80-88, and 93-95 under §103(a) as being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), in view of *Swix* (6,609,253), and in further view of *Casement et al.* (5,969,748).

VII. **ARGUMENT**

A. Rejection of Claims 74-79 and 89-92 under 35 U.S.C. §103

The Final Office Action rejected claims 74-79 and 89-92 under §103(a) as allegedly being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), and in further view of *Swix* (6,609,253). For at least the reasons set forth herein, Appellant respectfully disagrees with the rejection and requests that the rejection be overturned.

The Final Office Action (page 4) alleges that “*Goode* performs the claimed steps ‘responsive’ or following or done in return to the condition as claimed because ‘comprising’ is open-ended and allows for additional steps.” Appellant respectfully disagrees and submit that

“responsive to” requires more than sequential operation, “responsive to” also means “resulting from” even if intervening steps are also possible because the method comprises the various steps. Therefore, a step “responsive to” another must not only occur later in time, but must also be performed as a result of the first step being performed.

1. Claim 74

The Final Office Action rejected claim 74 under §103(a) as allegedly being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), and in further view of *Swix* (6,609,253). Appellant respectfully traverses this rejection and requests that the rejection be overturned for the reasons disclosed herein. Claim 74 includes several actions (“determining”, “providing”, and “establishing”) that are “responsive to” certain conditions which defines a particular flow that is neither taught nor suggested by the combination of references.

a. The References Do Not Teach “responsive to a [DHCT] experiencing a reboot condition, determining if at least one [VOD] rental has been purchased and not expired.”

Claim 74 recites “**responsive to a digital home communication terminal (DHCT) experiencing a reboot condition, determining if at least one video-on-demand (VOD) rental has been purchased and has not expired.**” The Final Office Action (page 4 - page 5) seems to suggest that *Metz et al.* in view of *Goode et al.* discloses this feature. However, in contrast to the claim, *Metz et al.* appears to simply disclose rebooting the device to run a new operating system. In addition, the Final Office Action (page 5) merely suggests that “[i]f the terminals [124] aren’t working, clearly *Goode et al.* doesn’t perform of the claimed steps. Therefore, given that the operation of the VOD service may require the repair of a terminal, the combined references perform the claimed step of ‘determining’ ‘responsive’ to a ‘reboot’.” Even assuming, for the sake of argument, that *Goode et al.* discloses “determining if at least one [VOD] rental has been purchased and not expired”, a point which Appellant does not concede

for reasons discussed below, the Final Office Action simply alleges that this “may require” the repair of a terminal which would result in a reboot. The mere fact that an operation “may require” a reboot does not suggest that the operation is performed “responsive to...experiencing a reboot condition” as recited in claim 74.

For at least this reason, Appellant contends that the cited references fail to teach or suggest “**determining if at least one video-on-demand (VOD) rental has been purchased and has not expired**” as a result of or “**responsive to** a DHCT experiencing a reboot condition.” The other cited references, individually or in combination, fail to overcome the deficiencies of *Metz et al.* in this respect.

b. The References Do Not Teach “responsive to determining that at least one VOD rental has been purchased and has not expired, determining whether a previously established VOD session for a first VOD presentation is still active.”

Claim 74 recites “**responsive to determining that at least one VOD rental has been purchased and has not expired, determining whether a previously established VOD session for a first VOD presentation is still active.**”

The Final Office Action (page 5) alleges that *Goode et al.* determines if at least one VOD rental has been purchased and has not expired. More specifically, the Final Office Action (page 5) alleges that “Figure 17 of the *Goode et al.* (‘490) application illustrates the described ‘active program list’ corresponding to “VOD rentals [that have been] purchased and have not expired” and that “the reference teaches that the particular screen displays only programs that have not expired or ‘before the use timer expires’” (page 5). Appellant disagrees.

Goode et al. discloses that “[t]he active program screen is displayed upon the user’s display device such that the user may select a presently open (i.e., ‘active’) session for presentation, e.g., finish watching the movie before the timer expires” (col. 17, lines 61-67). Appellant submit that “before the use timer expires” refers to determining whether the rental has

expired, and *Goode et al.* makes no mention of determining whether a previously established session, or individual presentation, of the VOD rental is still active. Therefore, *Goode et al.* does not disclose “responsive to determining that at least one VOD rental has been purchased and expired, determining whether a previously established **VOD session** for a first presentation is still active,” as recited in claim 74. The other cited references, individually or in combination, fail to overcome the deficiencies of *Goode et al.* in this respect.

c. The References Do Not Teach “responsive to determining that the previously established VOD session for the first VOD presentation is still active, providing a VOD current rental screen that includes a selectable option to view the first VOD presentation.”

The Final Office Action (page 6) seems to suggest that *Goode et al.* discloses this feature. The Final Office Action (page 6) alleges that *Goode et al.* “teaches that the SCM monitors the particular status of sessions in order to re-allocate bandwidth between various rentals.” More specifically, the Final Office Action alleges that

[g]iven that bandwidth must be allocated in order to provide a viewer with a VOD session, the system “determines that [a] previously established VOD session for the first presentation is still active” either when restarting playback in order [sic] deliver the presentation to the subscriber or in association with determining whether or not to maintain a given session. Subsequently, ‘responsive to determining’ the user is clearly able to view the previously noted ‘active program screen’ (page 6).

However, Appellant respectfully submits that “the video session manager terminat[ing] the session [when that session ends] and clear[ing] the session database” is not the same as **“responsive to determining that the previously established VOD session for the first VOD presentation is still active, providing a VOD current rental screen that includes a selectable option to view the first VOD presentation”** as recited in claim 74. Even assuming, for the sake of argument, that the screen of FIG. 11 corresponds to “a VOD current rental screen”, *Goode et al.* is silent with respect to the claimed feature of providing a VOD current

rental screen “**responsive to** determining that the previously established VOD session is still active”, as recited in claim 74. The other cited references, individually or in combination, fail to overcome the deficiencies of *Goode et al.* in this respect. Therefore, for at least the reasons disclosed above, Appellant respectfully submits that the rejection of claim 74 should be overturned.

2. Claim 89

The Final Office Action rejected claim 89 under §103(a) as allegedly being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), and in further view of *Swix* (6,609,253). Appellant respectfully traverses this rejection and requests that the rejection be overturned for the reasons disclosed herein. Claim 89 is directed to a digital home communication terminal (DHCT) having memory and program code. The program code is configured to enable the DHCT to perform several actions (“determine”, “provide”, and “establish”) that are “responsive to” certain conditions. Thus, the program code includes a particular conditional flow that is neither taught nor suggested by the combination of references.

a. The References Do Not Teach “determine if at least one video-on-demand (VOD) rental has been purchased and has not expired when the DHCT experiences a reboot condition.”

Claim 89 recites “a DHCT having program code stored in memory, wherein, when the DHCT experiences a reboot condition, the program code is configured to enable the DHCT to determine if at least one video-on-demand (VOD) rental has been purchased and has not expired.” The Final Office Action (page 8) suggests that *Metz et al.* discloses this feature. However, in contrast to the claim, *Metz et al.* appears to simply disclose rebooting to run a new operating system. Appellant contends that the cited references fail to teach or suggest a program code configured to enable the DHCT to “**determine if at least one video-on-demand**

(VOD) rental has been purchased and has not expired” when the DHCT experiences a reboot condition.

b. The References Do Not Teach “responsive to determining that at least one VOD rental has been purchased and has not expired, the DHCT is enabled to determine whether a previously established VOD session for a first VOD presentation is still active.”

Furthermore, claim 89 recites that “responsive to determining that at least one VOD rental has been purchased and has not expired, the DHCT is enabled to determine whether a previously established VOD session for a first VOD presentation is still active.” The Final Office Action (page 8) seems to suggest that *Goode et al.* discloses determining if at least one current rental exists. Appellant respectfully asserts that *Goode et al.* fails to teach or suggest making this determination when the DHCT experiences a reboot condition, as claimed. Instead, *Goode et al.* appears to simply disclose the user’s selection of an active program/saved movies screen, determining which sessions are open, and removing any open sessions in use by another set top terminal. Appellant asserts that the user’s **selection** is not the same as “a DHCT being enabled to **determine** if at least one video-on-demand (VOD) rental has been purchased and has not expired.” Even assuming, for the sake of argument, that *Goode et al.* discloses the aspect of determining that at least one VOD rental has been purchased and has not expired, it is clear that *Goode et al.* does not further enable a DHCT to perform any action “responsive to” this determination.

c. The References Do Not Teach “responsive to determining that the previously established VOD session for the first VOD presentation is still active, to provide a VOD current rental screen that includes a selectable option to view the first VOD presentation.”

Claim 89 further recites “enabling the DHCT, **responsive to determining that the previously established VOD session for the first VOD presentation is still active**, to

provide a VOD current rental screen that includes a selectable option to view the first VOD presentation.” The Final Office Action seems to suggest that *Goode et al.* (particularly col. 15, line 42 through col. 16, line 26; col. 17, line 55 through col. 18, line 33) discloses this feature. These noted passages of *Goode et al.* appear to correspond to the description of FIGS. 8 and 11. These figures, and descriptions thereof, fail to include an action “**responsive to determining that the previously established VOD session for the first VOD presentation is still active**” as claimed. Instead, FIG. 8 appears to teach a session control manager (SCM) starting a count down timer when a movie starts and stopping the timing when the movie stops. The SCM also sends session information to a network management system (NMS). With respect to FIG. 11, a user apparently selects a screen and the SCM determines open sessions, removing specific open sessions that are in use by other STBs.

Even assuming, for the sake of argument, that the screen of FIG. 11 corresponds to “a VOD current rental screen”, *Goode et al.* is silent with respect to the claimed feature of “providing a VOD current rental screen responsive to determining that the previously established VOD session is still active,” which is recited in claim 89. The other cited references, individually or in combination, fail to overcome the deficiencies of *Goode et al.* in this respect. Therefore, for at least the reasons disclosed above, Appellant respectfully submits that the rejection of claim 89 should be overturned.

3. Dependent Claims 75-79, 90-92

Since independent claims 74 and 89 are allowable for at least the reasons discussed above, dependent claims 75-79 and 90-92 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

B. Rejection of Claims 80-88 and 93-95 under 35 U.S.C. §103

The Final Office Action rejected claims 80-88, and 93-95 under §103(a) as being unpatentable over *Metz et al.* (5,666,293) in view of *Goode et al.* (6,166,730), in view of *Dunn et al.* (5,721,829), in view of *Swix* (6,609,253), and in further view of *Casement et al.* (5,969,748). *Casement et al.* does not make up for the deficiencies of *Metz et al.*, *Goode et al.*, *Dunn et al.*, and *Swix*. Therefore, dependent claims 80-88 and 93-95 are considered patentable under any combination of these references. Since independent claims 74 and 89 are allowable for at least the reasons discussed above, dependent claims 80-88 and 93-95 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). For at least the foregoing reason, Appellant respectfully submits that the rejection of claim 89 should be overturned.

VIII. **CONCLUSION**

Based upon the foregoing discussion, Appellant respectfully requests that the Examiner's final rejection of claims 74-95 be overturned by the Board, and that the application be allowed to issue as a patent with all pending claims.

In addition to the claims shown in the claims Appendix IX, Appendix X attached hereto indicates that there is no evidence being attached and relied upon by this brief. Appendix XI attached hereto indicates that there are no related proceedings.

No additional fee is believed to be due in connection with this appeal. If, however, any additional fee is deemed to be payable, you are hereby authorized to charge any such fee to deposit account 20-0778.

Respectfully submitted,

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IX. **CLAIMS - APPENDIX**

74. A method comprising:
responsive to a digital home communication terminal (DHCT) experiencing a reboot condition, determining if at least one video-on-demand (VOD) rental has been purchased and has not expired;
responsive to determining that at least one VOD rental has been purchased and has not expired, determining whether a previously established VOD session for a first VOD presentation is still active;
responsive to determining that the previously established VOD session for the first VOD presentation is still active, providing a VOD current rental screen that includes a selectable option to view the first VOD presentation, the VOD current rental screen having a VOD title of the first VOD presentation, information on the length of time remaining on the VOD title, and information on the rental time duration remaining for viewing the VOD title;
responsive to determining that the at least one VOD rental has been purchased and has not expired and responsive to determining that the previously established VOD session for the first VOD presentation is no longer active, establishing another active VOD session for the first VOD presentation and providing the VOD current rental screen; and
responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired, providing a list of selectable VOD titles.

75. The method of claim 74, further comprising:
receiving a user input configured to select the selectable option to view the first VOD presentation; and
responsive to receiving the user input, providing the first VOD presentation to a user.

76. The method of claim 74, wherein if establishing another active VOD session fails, retrying to establish another active VOD session for the first VOD presentation at various time intervals.

77. The method of claim 74, further comprising:
determining whether multiple VOD rentals have been purchased and have not expired; and

setting up a session for a most recently viewed VOD rental.

78. The method of claim 74, further comprising:
receiving a first user input configured to select a VOD title from the list of selectable VOD titles; and
responsive to receiving the first user input, providing a selectable option for renting a second VOD presentation corresponding to the VOD title selected from the list of selectable VOD titles.
79. The method of claim 78, further comprising:
receiving a second user input configured to select the selectable option for renting the second VOD presentation.
80. The method of claim 79, further comprising:
responsive to receiving the second user input, determining whether the second VOD presentation is blocked.
81. The method of claim 80, further comprising:
responsive to determining that the second VOD presentation is blocked, prompting a user to provide a third user input identifying a first access code for unblocking the second VOD presentation.
82. The method of claim 81, further comprising:
receiving the third user input identifying the first access code.
83. The method of claim 82, further comprising:
responsive to receiving the third user input identifying the first access code, prompting the user to provide a fourth user input identifying a second access code.
84. The method of claim 83, further comprising:
providing the user with the second VOD presentation responsive to receiving the fourth user input.

85. The method of claim 84, wherein the third user input and the fourth user input are each provided via a plurality of key-strokes.

86. The method of claim 84, wherein the first and second access codes each includes a plurality of characters.

87. The method of claim 84, wherein the third user input enables the second VOD presentation to be unblocked.

88. The method of claim 84, wherein the fourth user input enables the second VOD presentation to be rented.

89. A digital home communication terminal (DHCT) comprising:
memory; and

program code stored in said memory, wherein, when the DHCT experiences a reboot condition, the program code is configured to enable the DHCT to:

determine if at least one video-on-demand (VOD) rental has been purchased and has not expired,

responsive to determining that at least one VOD rental has been purchased and has not expired, determine whether a previously established VOD session for a first VOD presentation is still active,

responsive to determining that the previously established VOD session for the first VOD presentation is still active, provide a VOD current rental screen that includes a selectable option to view the first VOD presentation, the VOD current rental screen having a VOD title of the first VOD presentation, information on the length of time remaining on the VOD title, and information on the rental time duration remaining for viewing the VOD title,

responsive to determining that the at least one VOD rental has been purchased and has not expired and responsive to determining that the previously established VOD session for the first VOD presentation is no longer active, establish another active VOD session for the first VOD presentation and provide the VOD current rental screen, and

responsive to determining that at least one VOD rental has not been purchased or that previously-purchased VOD rentals have expired, provide a list of selectable VOD titles.

90. The DHCT of claim 89, wherein the program code is further configured to provide the first VOD presentation responsive to user input selecting the selectable option to view the first VOD presentation.

91. The DHCT of claim 89, wherein the program code is further configured to retry establishing another active VOD session at various time intervals if a previous attempt to establish another active VOD session fails.

92. The DHCT of claim 89, wherein the program code is further configured to determine whether multiple VOD rentals have been purchased and have not expired and set up a session for a most recently viewed VOD rental.

93. The DHCT of claim 89, wherein the program code is further configured to provide a second VOD presentation identified in the list of selectable VOD titles responsive to receiving a first user input selecting the second VOD presentation, a second user input identifying a first access code, and a third user input identifying a second access code.

94. The DHCT of claim 93, wherein the first access code enables the second VOD presentation to be unblocked.

95. The DHCT of claim 93, wherein the second access code enables the second VOD presentation to be rented.

- X. **EVIDENCE - APPENDIX**
None.

XI. **RELATED PROCEEDINGS - APPENDIX**

None.